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PART III.

Legislative Measures and Rules thereunder.

RULES FOR THE CONDUCT OF THE LEGAL AFFAIRS OF GOVERNMENT.

Vide G. O. No. P. 4966-5045—Cts. 76-23-1, dated 10—19th
March 1924.

PART I.

Law Officers.

1. The Law Officers of the Government are:—

- (i) The Secretary to Government, Legislative Department.
- (ii) The Government Advocate.
- (iii) Public Prosecutors and Government Pleaders.

SECRETARY TO GOVERNMENT LEGISLATIVE DEPARTMENT.

His duties.

2. The Secretary to Government, Legislative Department, is the Chief Law Officer of the Government.

3. It is his duty to give opinions on statutory rules and orders proposed to be issued by any Executive Department, and to advise the latter on the construction of statutes or regulations.

4. It is his duty to superintend and advise on the conduct of all litigation, civil or criminal, to which Government is a party or in which Government is in any way interested. He will also advise Government in business, the disposal of which depends upon the application or interpretation of the law.

5. The Secretary to Government, Legislative Department, is bound to advise Government on all legal questions in connection with the administration of public affairs, or arising out of the acts of Government officers or public servants, which may be referred to him by Government. This duty extends to Government business of all kinds and in all departments.

6. It is also the duty of the Secretary to Government, Legislative Department to advise Government, regarding proposals to appeal, under Section 417 of the Code of Criminal Procedure, against the acquittal of accused persons, and regarding proposals to apply to the Chief Court to exercise powers of revision in criminal matters arising in such Courts which District Magistrates are not authorised to refer direct to that court under Section 438 of the Code of Criminal Procedure.

7. In matters connected with Civil Justice, the Secretary to Government, Legislative Department is primarily responsible for the conduct of all suits, appeals and proceedings affecting Government.

8. (1) In all such matters the Head of the Department concerned will correspond in the first instance with the Secretary to Government, Legislative Department.

(2) Correspondence affecting the actual conduct in court of pending suits, appeals and proceedings may, however, when necessary, be conducted direct with the officer or practitioner conducting the case in court. The latter will supply the Secretary to Government, Legislative Department, with all such information as that officer may deem necessary to enable him to exercise proper supervision over the conduct of the case, or for statistical and other purposes.

9. It is also the duty of the Secretary to Government, Legislative Department, to draft Bills embodying such proposals for legislation as are approved by Government.

10. Bills so drafted will in the first instance be regarded merely as drafts intended to facilitate the further discussion of the proposed measure, if the Government consider it necessary, with the Department concerned or with such persons as the Government may think it desirable to consult.

11. If it should ultimately be determined to proceed to legislation, the draft prepared by the Secretary to Government, Legislative Department, will be returned to him; and it will be his duty to revise the draft, embodying in it all the provisions held to be necessary or desirable, and to finally mould the Bill in the shape in which it should be introduced into the Legislative Council, adding to it, the usual statement of object and reasons.

12. The Secretary to Government, Legislative Department, is bound also to bring to the notice of Government, from time to time, all new enactments which require the issue by Government of rules, orders, bye-laws or notifications. The administrative Department concerned will draft all such rules, orders, bye-laws or notifications, as may be necessary to issue, for the approval of Government, and all rules, orders, bye-laws or notifications which it is at any time proposed to issue in the name of Government in virtue of any power derived from any Legislative enactment, should, where necessary, be forwarded to the Secretary to Government, Legislative Department, in order that he may revise the same before they are issued, with a view to legal precision and correctness.

13. He may at any time visit any place for the purpose of inspecting or supervising the work of the Law Officers or the conduct of any civil or criminal litigation on behalf of Government.

14. The Government will exercise control over all Law Officers. All references relating to the remuneration, leave, duties or conduct of these Officers, except the Secretary and other matters affecting them should be addressed to the Secretary to Government, Legislative Department, who will submit them to the Government for orders.

15. The Chief Secretary to Government on receipt of notice under Section 80 of the Code of Civil Procedure shall forward

the same to the Secretary to Government, Legislative Department, for further action.

16. Heads of Departments should not ordinarily make direct reference to the Secretary to Government, Legislative Department, for any legal or other opinion, but should submit references to Government, who will call for the report of the Secretary to Government, Legislative Department or not, as they deem fit.

17. Municipalities and Local Boards must, as a general rule, be left to defend the legality of their own proceedings; and are not entitled to the advice of the Government Law Officers. But in cases of special importance or difficulty a reference may be made to Government to obtain the opinion or advice of the Secretary to Government, Legislative Department, for the guidance of Municipalities or Local Boards in their proceedings or in the defence of actions which have been brought against them or with which they are threatened.

THE GOVERNMENT ADVOCATE.

A. Appointment.

18. (1) The Government Advocate will be appointed by the Government.

(2) The appointment is tenable for three years and the incumbent is not ordinarily entitled to leave or pension. The same person may be reappointed, after expiry of his term.

(3) When the Government Advocate wishes to be absent for short periods on account of private affairs, sickness or such other sufficient cause, he will in communication with Government make such arrangement as may be necessary for the conduct of his duties.

(4) In other cases, the sanction of Government, both to the grant of leave and to the acting arrangements found necessary, should be obtained.

B. Duties—Criminal Work.

19. He will represent Government in all appeals and revision cases before the Chief Court, appear in connection with applications made to it for transfer of Criminal Cases, and generally appear before the Chief Court in all Criminal Cases in which Government have to be represented in that Court.

20. He will advise the District Magistrates in regard to the preferring of appeals against orders of acquittals.

21. He will also under special orders of Government appear in criminal cases before any other court.

C. Civil Work.

22. He will appear before the Chief Court in all Civil and Miscellaneous cases in which Government have to be represented in that Court.

23. He will, if so directed, represent Government in references under the Mysore Stamp Regulation 1900, the Income-tax Regulation, the Land Revenue Code and in other analogous references, and when specially required, in cases under the Legal Practitioners Regulation.

24. He will also, if so directed, represent Government in all original and appellate Civil proceedings in which Government may be a party, before any Court other than the Chief Court.

25. He will examine and draft deeds for Government in any Department.

D. General.

26. He will advise the Government in such important legal matters as may be referred to him.

27. When so directed by the Government he will conduct proceedings in cases where Government order a confidential

enquiry or an enquiry into the conduct of public servants before any Court or a Commission appointed for the purpose.

28. The Government Advocate is debarred from taking any criminal work whatever from private persons. On the Civil side he is debarred from appearing against Government in any case to which Government is a party.

29. In cases under the Legal Practitioners Regulation the Government Advocate should consult the Secretary to Government, Legislative Department, as to whether his services are required by Government. If they are not so required he will be free to accept a brief from the legal practitioners concerned.

30. The Government Advocate will report to the Government through the Secretary to Government, Legislative Department, any flaws in legal enactments and any facts arising out of or in connection with cases conducted by him which he thinks or the Chief Court desires, should be brought to the notice of Government.

31. He will report through the same channel the result of all prosecutions, appeals from orders of acquittals, applications in revision or otherwise, made by Government, and of cases of which he has been requested by the Secretary to Government, Legislative Department, to report.

32. He will arrange to procure copies of any judgment or orders which the Government may desire to have.

33. As soon as an appeal in which the Government Advocate has appeared, has been decided in the Chief Court, the Government Advocate will submit a copy of the judgment and decree to the Secretary to Government, Legislative Department, for transmission to the Head of the Department or other officer concerned to enable the latter to take immediate steps where necessary for the realisation of costs.

E. Remuneration.

35. The salary of the Government Advocate will be Rs. 500—50—700.

36. (1) No separate fees in addition to his salary will be allowed to the Government Advocate for any of his duties except those mentioned in rules 21, 23, 24 and 27.

(2) In cases in which he is entitled to fees, the remuneration,

(a) for each day's attendance in a Criminal Court will be a fee not ordinarily exceeding Rs. 25 unless a higher sum is sanctioned by Government in consideration of the exceptional importance and difficulty of the case. When more than one case is conducted on the same day, separate fees not exceeding two-thirds of the above scale will be allowed for each case. When a case is adjourned without trial or merely struck off, the fee for the day should be limited to Rs. 5. No fee will be allowed for studying records, for receiving instructions, for presenting an application or for filing a list of witnesses.

(b) for conducting or defending a Civil Suit or proceeding, will ordinarily be the maximum amount calculated according to rates of costs of the suit assessable by the Court, unless an additional sum is sanctioned by Government in consideration of the exceptional importance and difficulty of the case.

(c) in cases where the fee cannot be fixed under (b) such amount as may be awarded by the Government.

36. The bill for fees should be signed by the authority who consulted or instructed the Government Advocate and when the fee is for appearance in Court it should be signed by the Judge.

37. When the Government Advocate acts on behalf of Government in a place other than his headquarters he will be entitled to travelling allowance under the Mysore Service Regulations.

PUBLIC PROSECUTORS, GOVERNMENT PLEADERS AND THE
LEGAL PRACTITIONERS.

A.—Appointment.

38. The Public Prosecutor will also be *ex-officio* Government Pleader for his Division.

39. (1) The Government will appoint Public Prosecutors for each division,

(2) The appointment is tenable for three years and the incumbent is not entitled to leave or pension. The same person may be re-appointed after the expiry of his term.

(3) When Public Prosecutors and Government Pleaders have to be absent for short periods on account of private affairs, sickness or other sufficient reason, it is their duty to make satisfactory arrangements in communication with the District Magistrates and the District Judge for the conduct of Sessions and other work devolving on a Public Prosecutor and Government Pleader, without entailing additional cost to Government.

(4) In other cases the sanction of Government both to the grant of leave and to the acting arrangements, found necessary, should be obtained.

B.—Duties—Criminal.

40. As Public Prosecutors, they will conduct all prosecutions before Sessions Courts.

41. When required by the District Magistrates, in cases considered by him to be of special interest and importance, he will support convictions by the Assistant Sessions Judges and the Magistracy, in Sessions Courts. The Public Prosecutor will act as the representative of Government in the Court of Sessions and in that capacity shall receive and act upon all notices issued by such Court.

42. The Public Prosecutor may also be instructed by the District Magistrates with the previous sanction of Government, to appear for the Government in cases of special importance of difficulty in the Court of any Magistrate.

43. They will conduct the prosecution in cases under Section 14 of the Legal Practitioners' Regulation, 1884, unless in special cases, this duty is assigned to the Government Advocate.

44. Should the Public Prosecutor be disqualified from representing the Government in an appeal by reason of his having appeared for the defence in the Court of the convicting Magistrate or for any other sufficient reason, the District Magistrate shall appoint a properly qualified practitioner as Public Prosecutor in such appeal.

45. A Public Prosecutor may not appear for the defence in any inquiry under Chapter 18, Code of Criminal Procedure (Committal Proceedings before a Magistrate). With this exception he may practice in Criminal Courts without restriction subject however to the condition that he should not take up any case on behalf of any private person, whether a complainant or an accused, in which he has reason to believe that his services have been, or are likely to be, requisitioned by the Government.

46. The District Magistrate, is entitled to consult the Public Prosecutor upon any legal question arising out of a Criminal Proceeding, but except as provided in Rule 42 is not authorised to require him to appear in a case tried by, or inquired into, by a Magistrate.

C.—Civil Work.

47. As Government Pleaders they will conduct or defend Civil suits (including appeals) on behalf of Government, or an

officer of Government, in the District Court and other Subordinate Courts located in the head-quarters of their respective Divisions.

48. For the conduct of Civil cases in other Courts, a local Pleader will ordinarily be employed.

49. They will, when specially required, represent Government in Civil cases and proceedings in Courts other than those mentioned in Rule 47.

D. General.

50. When the permanent Public Prosecutor is not available, a substitute must be appointed for the conduct of the prosecution of every Sessions case by the District Magistrate. There may, however, be exceptional cases committed to the Sessions in which Government is not really interested, cases of a quasi-private nature and the like in which it is neither necessary nor desirable that Government should incur the expenses of engaging special Counsel. In such cases when the ordinary Public Prosecutor is for any reason unable to appear it will sufficiently meet the requirements of the law if the District Magistrate appoints a Police Officer not below the rank of Assistant Superintendent of Police to conduct the Prosecution. Such officer will be a Public Prosecutor within the meaning of Section 4, Sub-section, (2) clause (f) Criminal Procedure Code.

51. In Sessions cases a copy of the charge, the reasons for commitment and depositions of witnesses as well as of the statement of accused in Committing Magistrate's Court, should be supplied by the office of the Committing Magistrates to the Public Prosecutor concerned immediately after commitment.

52. In order that Public Prosecutors may familiarise themselves with documents in evidence and other papers on the records of Sessions cases, the Sessions Judge concerned should give every facility for inspection of such records by the Public Prosecutors.

53. On receipt of notice of commitment under Section 218 of the Code of Criminal Procedure, the Public Prosecutor should on the earliest opportunity examine the records of the proceedings before the Committing Magistrates, and see that any defect (such as the omission to summon a necessary witness) is, if possible, remedied before the date fixed for hearing in the Court of Session.

54. It is important that Public Prosecutors should keep in close touch with District Superintendents of Police and other responsible Police Officers in connection with the conduct of cases on behalf of Government. Public Prosecutors should also furnish such Police Officers with any information or reports as regards such cases which may be reasonably demanded by them.

E. Remuneration.

55. The salary of a Public Prosecutor will be Rs. 200—500—300 per month for his duties under rule 41.

56. (1) He will be entitled to fees for other duties.

(2) In cases in which he is entitled to fees the remuneration,

(a) for each day's attendance in a Criminal Court, will be a fee not ordinarily exceeding Rs. 16 unless a higher sum is sanctioned by Government in consideration of the exceptional importance and difficulty of the case. When more than one case is conducted on the same day, separate fees not exceeding two-third of the above scale will be allowed for each case. When a case is adjourned without trial or merely struck off, the fee for the day should be limited to Rs. 5. No fee will be allowed for studying records for receiving instructions; for presenting an application or for filing a list of witnesses.

(b) For conducting or defending a Civil suit or proceeding, will ordinarily be the maximum amount calculated according to rates of costs of the suit assessable by the Court unless an additional sum is sanctioned by Government in consideration of the exceptional importance and difficulty of the case.

(c) In cases where the fee cannot be fixed under (b) such amount as may be awarded by the Government.

57. Other Legal Practitioners who are entrusted with the conduct of cases in which Government is interested, will be paid.

(1) in Civil cases a fee which will ordinarily be on the same scale as in Rule 56 (2) Clauses (b) and (c).

(2) In Criminal Cases when the Government Advocate and the Public Prosecutor are not available, such fee as the Government may decide.

58. The bill for fees should be signed by the authority who consulted or instructed the Legal Practitioner concerned and when the fee is for appearance in Court it should be signed by the Judge.

59. When the Public Prosecutor acts on behalf of Government in a place other than his headquarters he will be entitled to travelling allowance under the Mysore Service Regulations. A Legal Practitioner will get the same rates of travelling allowance as a Public Prosecutor.

PART II.

Conduct and Distribution of Legal Business.

60. When disputes arise between departmental officers and persons with whom they or the Government contract or enter into agreements, reference should be made to the Secretary to Government, Legislative Department, at as early a stage of the dispute as possible.

61. References may be addressed to the Government Advocate only in the following cases:—

(i) references relating to any pending criminal proceeding which the Government Advocate may be actually conducting under proper authority in any Criminal Court;

(ii) references relating to the preferring of appeals against orders of acquittals;

(iii) reference relating to any pending Civil suit, appeal or proceeding which the Government Advocate may be actually conducting under proper authority in any Civil Court.

62. References may be addressed to Public Prosecutors direct, only with regard to pending Civil and Criminal Cases and proceedings which they are actually conducting or are required to conduct in any Court.

63. Unless otherwise expressly permitted by any rule references to the Secretary to Government, Legislative Department, for opinion may be made by or through the following officers only:—

(a) The other Secretaries to Government.

(b) Heads of Departments, in matters connected with Civil or Criminal Justice.

64. When a case by or against or affecting Government is actually pending in any Court any Officer of the department to which it relates, who is concerned in the conduct thereof may communicate direct with the Law Officer, Legal Practitioner, or other person who is conducting the proceeding, on behalf of Government.

65. Legal questions arising before Judicial Officers as such must not be referred to the Secretary to Government, Legislative Department.

66. Every case referred to the Secretary to the Government, Legislative Department, for his opinion or his advice should be accompanied by a note, either stating the facts of the case, or referring in proper order to the documents or parts of documents which indicate the facts and points for opinion. The letter of reference should state the precise points on which opinion or advice is sought. All available documents or copies thereof should be sent therewith.

67. Where an appeal is to be filed in the Chief Court against the decisions of Sessions Judges, the District Magistrate should forward a copy of the judgment against which the appeal is to be filed, for the information of the Government Advocate and also, whenever feasible, a copy of the evidence and other connected papers. He will arrange to give the Government Advocate necessary instructions for the preparation of the memorandum of appeal and the prosecution of the appeal.

68. The District Magistrates should bear in mind the responsibility which rests upon them to bring to the notice of Government instances of perverse or careless acquittal in which importance of the case and the probability of securing a conviction justify a resort to procedure being taken under Section 417 of the Code of Criminal Procedure.

69. The Proceedings in such cases will ordinarily be initiated by the District Magistrate, either on his own motion or on that of the Police. He will forward the record of the case together with a concise history of the facts, a statement of the grounds of appeal, and the opinion of the Government Advocate through the Secretary to Government, Legislative Department for the orders of Government. In submitting proposals for appeals against acquittals the District Magistrates should invariably give their own independent opinion and not merely forward the representation of Public Prosecutors or District Superintendents of Police.

70. In any case in which the Inspector-General of Police considers that an appeal should be filed he may move the District Magistrate to that effect. Should he refuse to move in the matter and the Inspector-General be unable to accept the reasons for the refusal or should the circumstances of the case be such that a reference to the District Magistrate would involve such delay as to prevent the appeal being filed within the prescribed time, the Inspector-General may refer the case direct through the Secretary to Government, Legislative Department, for the orders of Government.

71. As regards revisions in cases in which the Government applies for revision the application may be made by the District Magistrate or Sessions Judge direct under Section 434, Criminal Procedure Code or it may be made by the Government Advocate under the orders of the Government, on the report of the District Magistrate. In the latter case the Government Advocate, will appear in compliance with instructions received from the Secretary to Government, Legislative Department, and will himself present the application for revision and apply for permission to be heard under Section 440 Criminal Procedure Code. In cases in which a reference is made direct by the District Magistrate the Government Advocate will receive a notice from the Chief Court.

72. The responsibility for sending the necessary papers to the Government Advocate and instructing the Government Advocate will rest with the District Magistrate.

73. As regards the conduct of appeals from the decisions of the Magistrates of the Third and Second Class to the District Magistrate, and from the decisions of the Magistrates of the First Class to the Sessions Judge, the responsibility will rest with the District Superintendent of Police or the Assistant Superintendent of Police concerned, who will decide whether

a case is important or intricate enough to necessitate the representation of the Government. They will utilize the services of the Prosecuting Inspectors and see that they get the necessary papers and proper instructions for the prosecution of the appeal.

CIVIL LITIGATION.

Cases in which Government is a party.

A.—The Government as plaintiff.

74. No suit on the part of Government can be instituted in the civil court against any person without the sanction of the Government.

75. (1) The institution of a suit on behalf of Government should not be recommended by Departmental or Executive Officers until the proposed defendant has received ample opportunity of stating his view of the case and of coming to an agreement for the settlement of the Government claim out of court.

(2) While it is the duty of the officer of Government to enforce the just rights, and protect the interests of Government they should not have recourse to the law until all efforts to effect an amicable adjustment have failed.

(3) The case for Government should first be enquired into departmentally and evidence secured on all points which are likely to be contested.

76. Whenever it appears to the Deputy Commissioner or to the principal executive officer in any department in a district, that a suit on the part of Government ought to be instituted in the Civil Courts he will submit to the Head of the Department concerned a complete report of the circumstances of the case. The Head of the Department will forward his report with his opinion to the Secretary to Government, Legislative Department, for the orders of Government.

77. The Secretary to Government, Legislative Department, will then thoroughly inform himself of the whole of the circumstances, call for such further information or additional papers as he thinks necessary, and submit for orders with his opinion in detail as to the advisability of instituting a suit.

78. The report of the officer should contain, *inter alia* the following particulars:—

(a) The circumstances which, in his opinion, render the institution of the suit necessary, and precisely when and where they each occurred.

(b) The exact nature of the claim for which it is to be brought.

(c) A clear statement of all the evidence both oral and documentary by which the claim can be supported.

(d) Copies of the written document, if any, upon which the claim is based and any other papers, the inspection of which is considered necessary for the elucidation of the case.

(e) The pleas or objections if any, which have been urged by the proposed defendant against the claim.

(f) The evidence both oral and documentary which, so far as is known the proposed defendant will be able and is likely to adduce in his defence: and

(g) Any other material facts *e.g.*, the circumstances of the proposed defendant, any special reasons for the institution of the suit apart from the amount claimed, whether its decision will affect other claims and the like.

79. In cases of urgent necessity where the delay necessary for the reference to Government may be very prejudicial, the officer concerned may, on his own responsibility, file a suit, but he must immediately report, having done so and transmit full particulars as above.

80. Whenever the officer concerned considers it expedient, he must take steps for attachment before judgment of the property of the defendant, or for an injunction or other interlocutory order.

81. It should be stated in the report whether or not the circumstances of the person against whom it is proposed to institute the suit are such as to render it likely that a satisfaction will be obtained of any decree that may be given against him.

82. The probability of the recovery of a sum, at least equal to the costs, should be ascertained before recommending the institution of any suit unless for reasons which should be explained, it is considered that the suit should be brought notwithstanding that the recovery of costs is doubtful.

83. If the institution of the suit be sanctioned, a draft of the plaint will be prepared by the Government Pleader of the Division or the Legal Practitioner engaged in the suit, in consultation with the officer who proposed its institution, and will be submitted by him direct to the Secretary to Government, in the department concerned for approval. After the latter has accorded his approval thereto, the plaint shall be signed by the Officer concerned verified and presented by the said Government Pleader or the Legal Practitioner. True copies of the plaint as actually presented in Court, of any written statement filed by a defendant and of the issues framed in each suit, as well as of any subsequent amendment of the issues or additional issues under Rule V of Order 14 of Schedule I of the Code of Civil Procedure, should also be sent without delay by the Government Pleader or Legal Practitioner to the Secretary to Government, Legislative Department.

B.—The Government as defendant.

84. On receipt of the notice given under Section 80 of the Code of Civil Procedure, through the Chief Secretary to Government, the Secretary to Government, Legislative Department should give it immediate and careful attention. The complainant should be desired, when his statement as to the right asserted or infringement of right alleged, or as to the officer whose acts are impugned, is vague, to set these points forth succinctly and clearly as the most effectual means towards obtaining such relief as may properly be given.

85. The conduct or act complained of may have been either (1) wholly indefensible (2) justifiable, or (3) of a mixed or doubtful character. In every case the officer receiving the notice should endeavour, without prejudice, to determine to which of these classes it is to be assigned. If it is indefensible it is his duty to do what lies in his power to give immediate relief or to obtain it by a full report to the proper authorities. If the complaint is plainly groundless or if the threatened action is one which must undoubtedly be defended if it is brought, no further notice need be taken of the complaint. In the third class of cases, the officer receiving the notice should use every possible effort to distinguish between acts which have been properly done in the discharge of public duty and those in which through carelessness, ignorance or imprudence, some real cause for complaint has been given. On such analysis the cases should be dealt with according as they fall under one of the two heads already considered. When there is a doubt as to the real intention of the Government or of a superior authority in any order the carrying out of which has occasioned the complaint, that doubt should be cleared up by an immediate reference. When there is a doubt as to the legality of the act complained of though it may have been done in apparent fulfilment of a Rule or Order issued by a superior authority a clear statement of the case should be submitted for orders.

86. When a suit has been instituted, if it is against Government and the summons is therefore served on the Chief

Secretary, a copy of the plaint and the copy of the summons received (with the date of its receipt noted on the back) should be forwarded to the officer who himself or by his subordinates is alleged to have given room for the plaintiff's cause of action.

87. If owing to the suit being against an officer in his official capacity the summons is served on that officer personally he will act according to the instructions given in rules 88 and 89.

88. The officer to whom the Government send a copy of the plaint and any officer who is sued in his official capacity and who desires that Government should undertake the defence of the suit, shall collect with the least practicable delay all the information regarding the facts of the case which he can procure.

89. He is then, within one month from the date of his being first apprised of the Institution of the suit, to submit the following papers through the ordinary channel of communication, to the Head of his Department, *viz.*—

- (a) a copy of the plaint together with copies of any document or list of documents annexed to the plaint;
- (b) a translation of the same into English when it is in Vernacular, in half margin, the more important of the statements therein being distinctly marked with letters (a), (b), etc., and notes being added in the margin stating whether such statements are correct or not, and if not, in what respect they are inaccurate; (when the requisite explanation cannot be thus compressed, reference should be made to the paragraph of the accompanying statement in which the matter should be fully discussed);
- (c) a full and detailed statement (1) of the circumstances which led to the suit, (2) of the course which it is proposed to adopt, namely, whether to admit, compromise, or defend the suit, and of the reasons for the same, and (3) if it is proposed to defend the suit, of the grounds on which it is proposed to base the defence, and of the evidence to be adduced;
- (d) if the case turns on documentary evidence, copies of the documents (or the originals) relied on by the plaintiff (if procurable) and by the defence;
- (e) all the correspondence written and proceedings, whether in English or in the vernacular, connected with the subject-matter of the suit together with translations of important vernacular papers connected with the subject matter of the suit; and if files of papers are being sent, distinguishing marks should be used so as to indicate the papers to which attention is to be directed.

90. The forwarding report should state distinctly (1) the number of the suit, (2) the date on which, and the Court in which it was instituted, (3) the names of all the parties, (4) the amount or value of the claim, (5) the date fixed by the Court for the first hearing, and (6) whether notice of the action has been given under Section 80 of the Civil Procedure Code, and if so, the date of delivery of such notice.

91. If the suit is against an officer in his official capacity, he shall instruct the Government Pleader, or the Legal Practitioner engaged to move the Court from time to time, to grant an extension of the time for hearing the claim, under Order XXVII Rule 7, of the Civil Procedure Code, until the orders of Government are received. In the case of suits against Government, the Government Pleader or Legal Practitioner shall make the necessary applications to the Court for time, under Order XXVII Rule 5, of the Code, without express instructions. If in any instance the Court is likely to decline to grant further time, it is the duty of the Government Pleader, or Legal Practitioner to

inform the officer concerned in the defence of the suit, and, in emergent cases, the Secretary to Government, Legislative Department.

92. If two or more officers belonging to different departments are sued conjointly, or if the plaint in a suit against Government relates to the acts of two or more such officers, they should with the least possible delay, communicate one with the other, and after, if possible, mutual consultation with a view to a common line of defence, arrange for the preparation of a joint report. When a joint report is not sent, a separate report should be submitted simultaneously by each officer, care being taken by the officer, principally concerned that all the requirements of Rule 89 are complied with.

93. If the defence of a suit against Government is sanctioned, or if Government undertakes the defence of a suit against an officer in his official capacity, a draft of the written statement to be filed in answer to the plaint and prepared in consultation with the officer or officers concerned, shall be submitted by the Government Pleader or Legal Practitioner to the Secretary to Government, Legislative Department, for approval and the written statement, as approved or revised by the Secretary to Government, Legislative Department, shall be subscribed by the officer concerned, verified and presented to Court by the Government Pleader or Legal Practitioner.

94. Sanction to the defence of a suit, the plaint in which it not accepted for want of jurisdiction but returned for presentation to the proper Court having jurisdiction or which is dismissed on account of some technical objection such as want of due notice, shall, for the purposes of the above rule, be held to include sanction to the defence of any subsequent suit based on the same or a similar cause of action, that may be brought by the same plaintiff unless, in the opinion of the Secretary to Government, Legislative Department, there are special reasons which render it desirable to obtain further orders from Government in the matter.

95. In any such case the report under Rule 85 should be confined to forwarding such papers and information as are necessary to enable the Secretary to Government, Legislative Department, to consider whether any modification of his previous opinion, or addition to, or alteration in the grounds on which it was proposed to defend the former suit, is requisite. If the Secretary to Government, Legislative Department, considers there are no special reasons which render it desirable to obtain further orders from Government in the matter, he shall communicate his instructions for the defence of the new suit to the officer submitting the report under Rule 95 and to the Government Pleader or Legal Practitioner, who shall thereupon proceed in accordance with Rule 93.

96. The written statement and the issues sought on behalf of Government are ordinarily to be in strict accordance with the opinion of the Secretary to Government, Legislative Department, so far as concurred in by Government, but the Government Pleader or Legal Practitioner is responsible in communication with the officer concerned in the suit, for the correctness and exhaustiveness of the details of the defence.

97. A true copy of the issues framed in each suit, as well as of any subsequent amendments of the issues or additional issues under Rule 5 of Order XIV of Schedule I of the Civil Procedure Code, should be sent without delay by the Government Pleader or Legal Practitioner to the Secretary to Government, Legislative Department.

98. Whenever necessary or expedient, the Court should be moved to require from the plaintiff security for costs of the suit.

CONDUCT OF SUITS.

99. On receipt of the sanction of Government to the action proposed in the reports referred to, the Secretary to Government, Legislative Department, will issue instructions re the institution or defence of the suit as the case may be. These instructions may specify the person to whom the conduct of the case on the part of Government will be entrusted but the officer concerned will ordinarily make the actual arrangement for the engagement of counsel when this is necessary.

100. On the receipt of the instructions the person entrusted with the conduct of the case will be responsible for all further measures that may be required.

101. When a suit is under trial some intelligent officer thoroughly conversant with the facts of the case and the practice of the department concerned therewith should be deputed to be present to instruct the Government Law Officers as to the truth concerning matters which arise unexpectedly and to direct their attention to the documents or other evidence that may become important at each stage of the trial.

102. Should there be a difference of opinion between the Government Law Officers and the officer at whose desire the suit has been instituted or defended, as to the manner of conducting the case, a reference shall forthwith be made by the Government Pleader or Legal Practitioner to Government in order to obtain instructions of Government as to the manner in which the case is to be conducted. Should there be no time to consult Government the matter shall be left to the discretion of the law officer who may be in-charge of the case.

103. The following important points relating to the conduct of all suits should be carefully attended to by Government Pleaders or Legal Practitioners and all officers concerned (namely):—

- (a) the averments in a plaint, or in a written statement, should generally be based in every material point on the proof which can be adduced in support of them;
- (b) the evidence, whether oral or documentary, on which it is intended to rely should be carefully scrutinized by the Government Pleader before it is adduced, and he should advise as to its admissibility, and probable importance or unimportance, for the purposes of the suit, and suggest what evidence, if it be forthcoming, may with advantage be substituted for any which, in his opinion, would be weak or inadmissible;
- (c) all the available evidence should be assiduously collected and made ready for the day fixed for its reception, and the necessity of making applications for adjournment should as much as possible be avoided and such application on behalf of the opposite party should, unless they are made for sufficient reasons, be resisted as tending to prolong the litigation, and to give opportunities for the fabrication of false evidence;
- (d) all documentary evidence should be ready and should be produced at the first hearing of the suit, i.e., the day fixed for the settlement of issue, as required by Order XIII, Rule 1 (1), of the Civil Procedure Code, and when a suit is instituted, the documents sued upon should be produced in Court when the plaint is presented, together with copies thereof, as required by Order VII, Rules 14 and 17, of the Code, and the list of other documents relied upon as evidence, which is required by Order VII, Rule 14, to be annexed to the plaint, should be very carefully prepared.

Applications to the Court to accept any document in evidence, at any subsequent stage of the trial, should, unless under special circumstances, be avoided, as such applications cannot be granted without the grant of similar indulgence to the opposite party, which may place Government at a disadvantage and should be resisted, as providing occasion for forgery.

(e) documents filed by the opposite party should be carefully examined at the earliest opportunity, and compared with originals in the Government records, or with other papers which may tend to establish or subvert their authenticity;

(f) the production of documents in the possession of Government or of any Government Officer when lawfully required by the Court, or by the opposite party, should not be resisted unless for good and sufficient reasons such as are recognized by law, but the question of the admissibility of the documents when produced should be carefully considered and argued, it being borne in mind that the opinions of individual officers contained in official correspondence (which is so often called for by persons engaged in litigation with Government in order to establish their case) are, as a rule, not admissible in evidence;

(g) The object of Government in sanctioning either the institution or defence of any suit is simply to establish the truth; and, whilst Government expect the utmost vigilance and care on the part of those entrusted with the conduct of litigation on their behalf in asserting and protecting their just interests, they would impress upon pleaders who have the charge of cases that they will not countenance any attempt to snatch an unfair advantage by the withholding of important evidence, or by any disingenuous proceeding whatever.

104. The officer entrusted with the conduct of the case will at once send to the Secretary to Government, Legislative Department, a copy of the judgment passed in the suit.

APPEALS.

105. If the decision is either wholly or partially adverse to Government, the Government Pleader or Legal Practitioner when forwarding copies of the decree and judgment to the officer concerned, shall state his opinion with reasons as to whether an appeal should be made.

106. The officer after perusing the judgment shall call upon the Government Pleader or Legal Practitioner to send him copies of such of the exhibits recorded in the case as he deems necessary to explain the grounds of the decision so far as it deals with the merits of the case (or in important cases of all the material exhibits) and shall forward them together with the copies of the judgment and decree already received from the Government Pleader, or Legal Practitioner with a report stating his opinion as to whether the decision should be acquiesced in or appealed against, direct to the Secretary to the Government, Legislative Department.

107. This report must be despatched so as to reach the Secretary to Government, within fifteen days after the date of decree in cases in which an appeal lies to the District Judge and within one month after the said date in cases in which an appeal lies to the Chief Court.

108. A copy of the report shall be sent simultaneously to the Head of the Department who, if he concurs in it, will merely file it but if he differs from it, or considers it otherwise necessary

to address Government on the subject of it, shall submit a separate report on it without delay to Government.

109. The Secretary to Government, Legislative Department, after, calling for such further information or additional papers as he thinks necessary, shall submit his opinion as to whether an appeal should be made or not or as to what other course should be pursued. This must be done in time to enable the orders of Government upon it to be acted upon if necessary within the period prescribed by law for filing an appeal.

110. If an appeal be sanctioned, the officer concerned will instruct the Government Pleader in the District Court or the Government Advocate in the Chief Court accordingly, at the same time sending him Vakalatnama if the suit is against him personally. The records received by the Secretary to Government, Legislative Department, shall be sent to the Government Pleader or the Government Advocate as the case may be.

111. Appeals are ordinarily to be based strictly on the grounds recommended by the Secretary to Government, Legislative Department, and concurred in by the Government: but when an appeal is sanctioned generally against a decision the Government Pleader is responsible for availing himself of all legitimate grounds on which the decree may be open to objection. In important or intricate cases the memorandum of appeal should be submitted to the Secretary to Government, Legislative Department, for approval of Government before being filed in Court.

112. If an appeal is brought by the opposite party against the decision either entirely or partly in favour of Government a notice of the appeal will be served by the Court either on the Government Pleader or the officer concerned. In the former case the Government Pleader shall at once obtain a copy of the memorandum of appeal and forward it and the notice received by him (with the date of its receipt noted on the back) to the officer concerned. In the latter case the officer concerned shall at once send the Government Pleader the Vakalatnama and obtain from him a copy of the memorandum of appeal.

113. The officer concerned shall then report his opinion as to whether the appeal should be defended and make any explanation or remarks that may be needed with reference to the grounds of appeal. His report should be submitted to the Head of his Department and be accompanied by the same documents as are required to accompany a report under Rule 106.

114. The Head of the Department shall refer the report with his own opinion to the Secretary to Government, Legislative Department, and the provisions of Rules 109 and 110 shall then apply to the said report and the Secretary to Government with regard to his duty in respect thereof and to the instructions of the Government Pleader if the defence of the appeal is sanctioned by Government.

115. The provisions of Rules 101 and 102 apply equally to the conduct of appeals as to the conduct of original suits except:

that a discretion must be exercised by the Government Pleader in meeting new points raised for the first time in appeal, but that he should apply for an adjournment to enable him to consult with the officer concerned or with the Secretary to Government, if necessary, on any such points in which he may not have been fully instructed or to furnish an immediate reply.

116. When an appeal has been decided by a District Court the provisions of Rule 104 shall be observed as far as they are applicable just as in the case of the decision of an original suit.

SECOND APPEALS.

117. When an appeal from an original decree has been decided by a District Court either wholly or in part adversely to

Government the same course is to be pursued with respect to the bringing of a second appeal as in the case of an appeal from an original decree, provided that if the Secretary to Government, Legislative Department, is clearly of opinion that the case is one in which the law allows no second appeal, it shall not be necessary for him to refer it for the orders of Government.

118. When a second appeal is brought against an appellate decree either wholly or partly in favour of Government the same course shall be pursued as when an appeal is brought in the Chief Court against a similar original decree.

119. When an appeal whether against an original or appellate decree has been decided by the Chief Court, the Government Advocate shall communicate the nature of the decision as soon as it is pronounced to the Secretary to Government, Legislative Department, giving a brief statement of the grounds of the decision.

120. He shall also obtain with as little delay as possible two certified copies of the Court's judgment and of the decree and forward one to the Secretary to Government and the other with the papers in the case to the officer concerned. The officer shall inform the Head of his Department of the result of the case sending him the copy of the written judgment if any or not as he deems necessary.

EXECUTION OF DECREES.

N. 8.—Decree includes an order of a Civil Court as defined in Section 2 of Code of Civil Procedure.

121. In the case of decrees under which money is due to Government, the officer concerned shall, as soon after the decree, as possible, obtain through the Pleader engaged in the case, a copy of the decree and in the absence of any special instructions to the contrary proceed as follows:—

(a) If the person from whom the amount is due or his pleader, is known to the officer or the Government Pleader, and is readily accessible to either of them, they shall endeavour to recover the amount from him.

(b) If there is reason to think that the amount due cannot be recovered under clause (a) and the officer or the Government Pleader know of any property of the judgment debtor from which the amount due or part of it may be realised (e.g., immovable property, securities, money deposited in courts or the subject matter of a suit on which Government have a first charge under Order 33 Rule 10 of the Civil Procedure Code), they shall at once, or as soon as any necessary information has been obtained, make an application for execution by attachment, etc., of such property. If any property has already been attached before judgment, application for sale of the property may be made. (In order to be in a position to make such an application without delay, the Government Pleader, shall in any suit or other case where he appears on behalf of Government or a Government officer and where he has reason to think that there may be difficulty in executing a decree in favour of Government obtain before the suit or case is decided from the officer concerned instructions in writing as to how he shall proceed in the event of a decree being passed in favour of Government and detailed information as to any property for the attachment, etc., of which such an application might be made.)

(c) Where action is not taken under clause (a) or (b) the officer concerned shall without delay send the copy of the decree to the Secretary to Government, Legislative Department, through the usual channel with a report stating *inter alia*:

- (i) the reasons for not taking such action.
- (ii) the date on which the period of limitation for the execution of decree will expire, and

(iii) any information which has come to his knowledge and the possession of which is likely to facilitate the recovery of the money due to Government.

(d) Where action is taken under Clause (a) or (b) the officer concerned shall as soon as possible at any rate within one month of the date of receipt of the copy of the decree, report his proceedings to the Legislative Secretary, through the usual channel and send him the copy of the decree if no longer required by him. He shall also report the result of his proceedings on their completion and if they have not been successful in recovering the whole of the amount due furnish the information specified in items (ii) and (iii) of Clause (c).

122. In cases where the whole amount due has not been recovered the Deputy Commissioner on the request of officer concerned shall through the Revenue or other agency make enquiries as to the property and means of the person liable and report the same to the officer concerned.

123. (1) The officer concerned may then pass such orders for the making of an application in court for the recovery of any amount due or for the recovery thereof by other lawful means, as he may think fit.

(2) Where any sum due to Government under a decree is recovered otherwise than through the agency of the court, the Government Pleader should be instructed to certify such recovery to the court under Order 21 Rule 2 of the Civil Procedure Code.

(3) As soon as a Government Pleader recovers any money on behalf of Government in execution of a decree he shall at once pay the amount into the treasury to the credit of the department concerned and report the fact to the officer concerned.

124. Orders under the above rule shall be passed on all cases in sufficient time to admit of an application to the Court, if such application is directed, being made within the period prescribed by the law of limitation.

125. If an appeal is instituted and the execution of the decree is stayed by order of the court, the interval before the decision of the appeal should be employed in making enquiries as to the property of judgment debtor.

126. Upon the court ordering the attachment of the debtor's property the Government Pleader shall at once apply to the officer concerned to depute some one to accompany the attaching officer and to point out the property.

127. In case claims are made by third parties to the property attached the officer on whose report the property was attached shall collect the evidence, by which it is proposed to show that the property belongs to the debtor and he shall if possible be present in court and instruct the Government Pleader when the case comes on for trial.

128. If it appears altogether improbable that the person liable will be able to pay what is due by him under the decree or the balance of what is so due by him, within the period limitation, or if for any reason the officer concerned thinks it inexpedient that such person should be further pressed, he may apply to Government through the Secretary, Legislative Department, for sanction to write off the amount still due, but as a general rule steps for the recovery of such dues should be unremittingly continued until the period of limitation expires when, if necessary, steps should be taken by the officer concerned as aforesaid.

129. (i) The Head of each Department shall keep in his office a register of amounts due to Government under decrees in the following form, and shall have the necessary particulars entered therein on receipt of the copy of any such decree and from time to time as occasion requires.

(ii) This register should be kept in separate parts 1 and 2 for entries in respect of (1) amounts due to Government under decrees in suits, appeals or applications to which Government or a Government Officer is a party, and (2) court fees and pauper costs payable to Government under Order 33 or 44 of Civil Procedure Code.

Serial No. of case	Name of court which pass the decree	No. and year of suit or appeal or application	Name of parties	Date of decree
1	2	3	4	5

Date on which the period of limitation expires	Judgment debtor			Amount due to Government	
	Name	Residence	Occupation	On what account	Amount
6	7	8	9	10	11

Steps taken for recovery		Recoveries effected			Date of credit to Treasury
Nature of step	Date of taking steps	How recovered	Date	Amount	
12	13	14	15	16	17

Written off as irrecoverable		Net balance to be recovered	Remarks (here enter any information available as to judgment debtor's pecuniary circumstances what property if any he owns, etc.)
No. and date of G. O. or officer's order	Amount		
18	19	20	21

MISCELLANEOUS.

130. Expenses connected with the institution, defence and the conduct of any suit or proceeding will be met by the department concerned, from out of its budget grants. Recoveries will also be credited to the department.

131. Advances of money necessary for the initial and subsequent expenses of a suit or proceeding will be made by the department concerned, after obtaining sanction of Government. In urgent cases, however, the necessary amounts may be advanced, and the matter reported to the Government through the Secretary, Legislative Department, for sanction.

132. Copies of documents on the Government records are often applied for as means of supporting a claim either before or after commencement of a suit against Government. Such copies should be furnished when the documents are of a public character and are pertinent to the cases for which they are required. Copies of confidential communications

as those between Government and an officer or between one officer and another dealing with particular transactions or the rights or duties of individuals should not in general be given. In cases of doubt the proper criterion to apply is whether, if a copy is refused the original may properly be called for by the court or whether such a call may properly be resisted according to the principles of the Evidence Act. Every copy taken or its original should be carefully considered by the Government Pleader for whose perusal it will be submitted by the officer making the copy.

133. When documents in the charge of a Head of a Department are called for by a court he should consider whether they include communications made in official confidence, the production of which will be injurious to public interest. To the production of such documents he should object and he will be careful to prevent his subordinates transgressing this rule upon summons directed to them personally instead of to himself in whom the custody of the documents is vested and without those orders subordinates are not at liberty to remove or otherwise deal with documents of the department.

134. If it appears advisable to an officer of Government to intervene in any suit to which Government have not been made a party or if he shall deem it necessary to institute, or shall be called upon to defend any miscellaneous proceedings on behalf of Government the rules prescribed for regular suits in all their stages shall *mutatis mutandis* be deemed applicable provided that in cases of emergency the officer may act in anticipation of the orders of Government, but shall at once report his proceedings through the channel prescribed by the said rules.

135. No suit, or other civil proceeding is to be settled out of court or compromised in court by any officer of Government without the express orders of Government to be obtained through the Secretary to Government, Legislative Department, after submitting a full explanation of the course proposed to be adopted.

136. All correspondence and all orders of Government on the subject of suits or other civil proceedings are to be regarded by all officers of Government and by all pleaders into whose hands they may come, as strictly confidential. No public officer shall grant copies of any such correspondence or Government orders during the pendency of the suit or civil proceeding or until its final decision by the highest court, before which it is likely to be brought for any reason whatever and no such copies shall be granted at any time after such final decision without the previous sanction of the Head of the Department.

137. When the exhibits in an original suit or other proceeding are so numerous or so important as to necessitate a Government Pleader's obtaining copies thereof for his own use or for that of special counsel and whenever a Government Pleader for any reason whatever obtains copies of any such exhibits he shall take care to have them legibly written on one side only of the paper with a quarter margin so that they may be afterwards used by counsel and others in every subsequent stage of the case.

Certified stamped copies should only be obtained when they are required for filing in the court or when these rules expressly state that certified copies should be procured.

English translations must be sent of all vernacular papers intended for the use of Government.

138. At every stage of important development in all cases either civil or criminal, the law officer concerned should make a report to the Secretary to Government, Legislative Department, and obtain instructions.

139. If in any case the interests of the Government suffer owing to negligence or inadvertance of the officers concerned they will be held personally responsible for the loss.

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140. Government are not bound to defray the cost of defence in suits against Government officers. The officers concerned must undoubtedly bear them where their proceedings have been condemned as irregular and opposed to law, or to the standing orders of Government, or the established practice of the Department concerned.

141. Extracts of register maintained under Rule 129 should be sent to Government in the Legislative Department every quarter.

142. The Government Advocate, Government Pleaders and Public Prosecutors shall send to the Secretary to Government, Legislative Department, every quarter the following returns in addition to any that they may be sending now. Other Legal Practitioners will also send the same returns in respect of cases in which they are engaged. When there are no cases to be entered in the return it shall be sent blank.

I. Return of original suits, appeals and other civil proceedings instituted or pending during the quarter ending in which the Government Advocate, the Public Prosecutor or Legal Practitioner represented the Government.

Court in which instituted	Nature of case i.e., whether an original suit, appeal or other Civil proceeding and amount and description of claim.	No. of case	Date of institution	Parties	
				Plaintiff Appellant or Petitioner	Defendant Respondent or Opponent
1	2	3	4	5	6
Date fixed for the hearing	Dates of previous hearings	Stage of pending	Final Disposal		Remarks
			Date	Result	
7	8	9	10	11	12

II. Return of Execution proceedings for the quarter ending.

Court in which instituted	No. of the original case with date of decree	Date of institution	Parties	Previous application if any with dates	Relief asked for
1	2	3	4	5	6

Result	Recoveries if any	Date of credit into treasury	Balance still to be recovered	Remarks
7	8	9	10	11

III. Return of Criminal Cases for the quarter ending

Court in which instituted	No. of case	Date of institution	Parties	
			Complainant Appellant or Petitioner	Accused, Respondent or opponent
1	2	3	4	5

Date fixed for the hearing	Dates of previous hearings	Stage of pendency	Final Disposal		Remarks
			Date	Result	
6	7	8	9	10	11